

HUMAN SERVICES BOARD

INTRODUCTION

FINDINGS OF FACT

2. The device requested provides a constant level of positive air pressure noninvasively to assist spontaneous respiratory efforts and supplement the volume of air taken into the lungs. It also prevents the collapse of the oropharyngeal (upper throat) walls and obstruction of air flow during sleep.

3. DCF responded to the petitioner in July 2005 that it would rent such a device for him for three months in order to undergo a trial period and would purchase the device after the trial period if his physician certified that it proved to be beneficial.

4. The petitioner appealed that decision insisting that DCF should purchase the device for him immediately because (1) the device has already been proven useful to him in an overnight trial at a sleep clinic; (2) it costs more in the long run to rent the machine than to buy it; and (3) he is moving to Baltimore in August of 2005 (to be near a hospital needed by his child) and needs to take the device with him. He has refused to rent the device in the interim and is currently not using it.

5. At the hearing, the petitioner provided medical evidence of a diagnosis of "severe obstructive sleep apnea syndrome" made in April of 2005 based on an overnight polysomnogram which showed an "AHI" (an index based upon a combination of apneas and hypopneas) of 81 events per hour and oxygen desaturation persisting at about a 10 percent level, going as low as 12 percent. It was recommended by the testing physician that the petitioner consider treatment with a nasal CPAP. In June of 2005, the petitioner underwent an

overnight monitored trial with the CPAP with a finding that the AHI was reduced to 5.3 per hour through use of the device. It was recommended that the petitioner "should use the unit whenever trying to sleep." The petitioner argues that this evidence negates any need for a trial rental period.

6. DCF reviewed the medical evidence and again denied purchase of the machine stating that a three month trial is still required before purchase to ensure that the petitioner can tolerate the machine. Again, DCF offered to rent the machine for the petitioner and informed him that it would not purchase the machine until he had undergone a three-month trial.

ORDER

The decision of DCF is affirmed.

REASONS

VHAP covers durable medical equipment, including oxygen systems such as the CPAP, as set forth in the regulation that follows:

Benefits are provided for the rental or purchase of durable medical equipment. The department has the right to determine whether rental or purchase of the equipment is more cost effective and/or appropriate. The department also has the right to recover equipment that

is no longer needed by the enrollee. The equipment then becomes the property of the department.

VHAP 4005B(5)(a)

DCF uses a guideline with regard to the rental or purchase of a CPAP device which provides, in pertinent part, as follows:

This device may be appropriate for the individual who:

- Has had a sleep apnea evaluation documenting an Apnea-Hypopnea Index (AHI) of > 15 events per hour OR
- An ANI > 5 and less than 14 events per hour with documented symptoms of excessive daytime sleepiness, impaired cognition, mood disorders or insomnia, or documented hypertension, ischemic heart disease or history of stroke AND
- The AHI equals the average number of episodes of apnea and hypopnea per hour, based on a minimum of 2 hours of sleep recorded by polysomnography AND
- Where apnea is defined as a cessation of airflow for at least 10 seconds, and hypopnea is defined as an abnormal respiratory event lasting 10 seconds with at least 30% reduction in thoracoabdominal movement or airflow as compared to baseline, and with at least 4% oxygen desaturation. (Revised coverage, April 2002, Medicare)

The OVHA requires an initial 3 month rental for CPAP. At the end of the trial period, the prescribing provider will determine and document whether continued use is medically necessary, is efficacious, and the beneficiary is willing and likely to continue using the equipment.

CAUTIONS: Some individuals do not tolerate the sensation of CPAP and are therefore not motivated to use the device. Consideration should be given to the

possibility of aspiration of gastric contents when using the device with an orofacial mask should there be a failure of the positive pressure device. . .

Guidelines for OVHA Coverage

Item: Continuous Positive Airway Pressure Device

(Emphasis supplied)

DCF is not disagreeing with the petitioner that he has a condition which indicates that the requested device "may be appropriate" for him under its guidelines. DCF, pursuant to these same guidelines, has agreed to place the petitioner on a three-month trial which specifies rental of the device to be followed by purchase if approved by the petitioner's physician. The guideline makes it clear that the trial is not only to determine whether the device is beneficial to the petitioner but also whether he can tolerate using it. It cannot be found that DCF's reasons for renting this device are unreasonable given the explanation in the guidelines.

Furthermore, the regulation itself makes it clear that it is DCF's choice whether to rent or to purchase any medical device for a beneficiary under the VHAP program based on what DCF, not the beneficiary, feels is most cost effective. The petitioner's reasons for wanting to own the machine are purely personal, namely his decision to move to another state. However, that personal need does not require DCF to

skip the trial and buy a machine which he can take with him to a new state. As DCF's decision not to purchase the CPAP is consistent with its regulations, the Board is bound to uphold the decision. 3 V.S.A. § 3091(d), Fair Hearing Rule 17.

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